

### **NOTICE OF ALLOWANCE**

This action is in response to the amendment filed July 12, 2010. Claims 2, 4, 6-9, 16-17, 19-30, 33-39, 41, 43-94, 96-98, 100-146 and 149 are cancelled. Claims 1 and 3 are amended. All of the amendments have been thoroughly reviewed and entered. The previous rejections in the Office action mailed on April 16, 2010 are withdrawn in view of the amendments.

### ***Response to Amendment***

1. **The Kandimalla Declaration under 37 CFR 1.132 filed September 17, 2010 is sufficient to overcome** the rejection of Claims 1, 31 and 148 based upon 35 U.S.C. 103(a) as being unpatentable over Yu et al (2000; \*of record in IDS) in view of Kandimalla et al (2001; \*of record in IDS), Liu et al (2001; \*of record) Yu et al (2002; \*of record in IDS), Krieg (U.S. 2004/0053880; of record) and Wise et al (U.S. 2004/0009933).

Applicant declares that the terms P-base or dP describe a nucleoside having a distinctly different chemical structure than pyrrolo-dC, do not represent a genus of nucleotides, and that the labeling of pyrrolo-dC by Woo et al (1996) as "dP" was in error. The Examiner finds this persuasive.

### ***Terminal Disclaimer***

2. **The terminal disclaimer filed on September 21, 2010** disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 7,354,907 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Allowable Subject Matter***

3. **Claims 1 and 31 are allowable.** Claims 3, 5, 10-15, 18, 32, 40, 42, 95, 99, 147-148 and 150-153, previously withdrawn from consideration as a result of a restriction requirement, require all the limitations of an allowable claim. Pursuant to the procedures set forth in MPEP §821.04(a), the restriction requirement between inventions groups or species, as set forth in the Office action mailed on September 14, 2006, is hereby withdrawn and Claims 3, 5, 10-15, 18, 32, 40, 42, 95, 99, 147-148 and 150-153 are hereby rejoined and fully examined for patentability

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under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP §804.01.

### ***Examiner's Amendment***

4. **An Examiner's amendment to the record appears below.** Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview with Applicant's representative Joseph Zuccherro on September 21, 2010.

The claims have been amended as follows:

In Claim 10, the phrase "one purine nucleoside" (line 1) has been replaced with the phrase "the G base".

5. **The following is an Examiner's statement of reasons for allowance:** The prior art does not teach or fairly suggest an immunostimulatory RpG dinucleotide motif, wherein the R is a pyrrolo-dC nucleotide as a base and G is a nucleotide having a base selected from the group consisting of guanine, 2-amino-6-oxo-7-deazapurine, 2-amino-6-thiopurine, 6-oxo-purine or other non-natural purine.

Any comments considered necessary by Applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

6. Claims 1, 3, 5, 10-15, 18, 31-32, 40, 42, 95, 99, 147-148 and 150-153 are allowed.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kevin K. Hill whose telephone number is 571-272-8036. The Examiner can normally be reached on Monday through Friday, between 9:00am-5:00pm EST.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Joseph T. Woitach can be reached on 571-272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin K. Hill/

Primary Examiner, Art Unit 1633